

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MARIETTA SMALL, Public Administrator :
of Kings County, as Administrator of the :
Estate of Andy M. Herrera, et. al., :

Plaintiffs, :

v. :

CITY OF NEW YORK, et. al., :

Defendants. :
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MARIA PENA, Individually, and as the :
Administrator of the Estate of Dilcia Pena, :

Plaintiffs, :

v. :

CITY OF NEW YORK, et. al., :

Defendants. :
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ORDER

02 CV 3163 (NG)(JMA)

02 CV 3147 (NG)(JMA)

GERSHON, United States District Judge:

This order is in response to the December 14, 2005 letter from Gregory M. Longworth, on behalf of defendants Conway, Welsh, Sills, Prinzano, Gaudio, Desario, Alba, Chaves, McGill, Hilderbrand, Finkelstein, Immitt and Gallo (the “Individual Police Officer Defendants”), requesting entry of an order dismissing the state-created danger claims as to those defendants on the basis of qualified immunity, in accordance with the decision by the United States Court of Appeals for the Second Circuit, in *Pena v. Deprisco*, __ F.3d __, 2005 WL 3340380 (2d Cir. December 9, 2005).

This court may not enter such an order until the issuance of a Mandate from the Second Circuit.

The application for a stay of all other proceedings associated with these cases is denied.

SO ORDERED.

/s/ Nina Gershon
NINA GERSHON
United States District Judge

Dated: December 27, 2005
Brooklyn, New York